IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 8 OF 2005

SMT. MARIA DO R.P.T.O. DOS DORES(DEC.)THROU'L.RS., ...Appellants

Versus

SHRI CARLOS FERNANDES AND 2 ORS., ...Respondents

Mr. A. F. Diniz, Advocate for the appellants.

Coram:- R. M. LODHA, J.

Date:- 21st September, 2005

P.C.

Heard Mr. A. F. Diniz, the learned Counsel for the appellants. I perused the Order dated 13/01/2005 passed by the IInd Additional Civil Judge, Senior Division, at Margao. I also considered the two Judgments referred to and relied upon by the learned Counsel for the appellants: (1) the Judgment of the Supreme Court in the case of Maharwal Khewaji Trust (Regd), Faridkot vs. Baldev Dass, 2005(4) Bom. C.R. 408, and (2) the Judgment of this Court in the case of Shri Datta Laxman Naik and anr. vs. Shri Damodar Laxman Naik and ors., 2003(1) Goa L.T. 24.

The trial Court has, on the basis of the available material, found that the defendants were long, continuous and undisturbed possession of the subject properties, namely Survey No.42/1 and 42/1-A. In view thereof, the finding of the trial Court that the plaintiffs have failed to establish the prima facie case cannot be faulted.

The trial Court also recorded the statement of the defendants that no alterations or modifications are intended to be done to the subject houses, except placing of wooden canopy with mangalore tiles to the

verandah at the entrance of House No.12/2. The trial Court held that the plaintiffs failed to show any irreparable injury.

I find no justifiable ground to take a different view in the matter. The Judgments cited by the learned Counsel for the appellants do not apply to the facts of the present case. The discretion exercised by the trial Court in rejecting the appellants' application for temporary injunction does not suffer from any legal infirmity.

The appeal from order is dismissed in limine.

R. M. LODHA, J.

ssm.